

NORTH CAROLINA
DURHAM COUNTY

APRIL 12, 2023

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

MUNICIPAL CONSTRUCTION
AGREEMENT

AND

PROJECT: P-5717

WBS: 46929.1.1 PE
46929.2.1 ROW
46929.2.2 UTILITY
46929.3.1 CON

CITY OF DURHAM

THIS MUNICIPAL CONSTRUCTION AGREEMENT (hereinafter "Agreement") is made and entered into on the last date executed below and constitutes an agreement between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina (hereinafter "Department"), and the CITY OF DURHAM, a municipal entity (hereinafter "Municipality"). Each party hereinafter will be referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, the Department plans to eliminate redundant and/or unsafe at-grade rail-highway crossings on a statewide basis as part of a comprehensive effort to improve and promote safer and more efficient rail and highway operations along heavily used railroad corridors; and

WHEREAS, the Department has proposed certain improvements along SR 1121 (Cornwallis Road) that will eliminate the at-grade crossing (Crossing No. 734 742W, Milepost (MP) H-62.83), and will include the construction of a grade separation on SR 1121 (Cornwallis Road) that will involve a roadway bridge structure over the North Carolina Railroad (hereinafter "NCR") railroad line and improvements to SR 1956 (Miami Boulevard), in Durham, Durham County, North Carolina, hereinafter referred to as the "Project", and

WHEREAS, the Department has programmed funding in the approved State Transportation Improvement Program (STIP) for the Project; and

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following legislation: General Statute of North Carolina (N.C.G.S.) §§ 136-18, -20, to participate in the planning and construction of the Project approved by the Board of Transportation; and

WHEREAS, as part of the construction of the Project, the Municipality has requested the Department add some betterments to the Project, including, but not limited to, sidewalk construction, multi-use path construction, and installation of vinyl coated chain link fence (hereinafter "Betterments"); and

WHEREAS, the Department has agreed to include said Betterments in the Project subject to reimbursement by the Municipality; and

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs of the Project and to assume certain maintenance responsibilities as hereinafter set out; and

WHEREAS, the Municipality agrees that construction of the Project and Betterments is contingent upon the permanent closure of the at-grade highway/railroad crossing of SR 1221 (Cornwallis Road) (Crossing No. 734 742W, MP H-62.83); and,

WHEREAS, the Municipality fully understands that this Agreement is contingent upon and subject to the receipt and availability of the appropriate funds for the purpose set forth in this Agreement, and this Agreement shall automatically terminate if funds cease to be available.

NOW, THEREFORE, this Agreement states the promises and undertakings of each Party as herein provided, and the Parties do hereby covenant and agree, each with the other, as follows:

1. PROJECT WORK

This Project shall consist of the construction of a new grade separation on SR 1121 (Cornwallis Road), involving approximately a 0.67-mile section from Sta. 12+75 to Sta. 47+99 of existing SR 1121 (Cornwallis Road), and a roadway bridge structure of approximately six hundred feet (600') in length over the NCCR railroad line. As part of the Project, the existing at-grade crossing of SR 1121 (Cornwallis Road) (Crossing No. 734 742W, MP H-62.83) will be permanently closed once the grade separation is completed. The Project also includes improvements to SR 1956 (Miami Boulevard) from north of SR 1121 (Cornwallis Road) to north of Guardian Drive.

In addition, the Project will also include construction of an alternate access grade separation and associated roadway improvements to SR 1121 (Cornwallis Road), SR 1956 (Miami Boulevard), and SR 1969 (Chin Page Road) and construction of alternate access to IBM Drive and Kitty Hawk Way on International Business Machine property.

2. BETTERMENT WORK

The Betterments consist of the improvements as set forth below. At the request of the Municipality, the Department shall construct the Betterments in conjunction with the Project work, and as shown on the approved Project plans. The estimated cost of the Betterments, as set forth below, is approximately Two Hundred Ninety-Three Thousand Four Hundred Sixty-One and 98/100 Dollars (\$293,461.98), as shown on the attached Exhibit A.

- construction of eight thousand five hundred thirteen square feet (8513 SF) of concrete sidewalk behind curb and gutter on SR 1959 (Miami Blvd.)
- construction of three thousand three hundred twenty-eight linear feet (3328 LF) multi-use path including right-of-way (ROW) and easement for the multi-use path

- installation of approximately six hundred fifteen linear feet (615 LF) of vinyl coated chain link fence on the bridge structure.

The Municipality understands that these are estimated costs and are subject to change as more precise numbers are developed. The actual total construction and right-of-way costs of the Betterments, including administrative costs, shall be determined upon completion and acceptance of the Project.

3. FUNDING

The current estimated Project cost is Thirty-Eight Million One Hundred Fifty-Six Thousand and 00/100 Dollars (\$38,156,000.00).

4. DESIGN

The Department, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package) needed to construct the Project and Betterments. All work shall be done in accordance with applicable federal and State standards, specifications, policies, and procedures. Project plans shall be submitted to the Municipality for review and comment. All comments must be submitted in writing to the Department within sixty (60) days of receipt of the plans from the Department. If no comments are received from the Municipality within sixty (60) days, the Department shall conduct a conference call meeting within five (5) business days thereof to discuss the status of the plans review.

5. ENVIRONMENTAL/PLANNING DOCUMENTATION

The Department shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project and Betterments, in accordance with the State Environmental Policy Act (SEPA) or as required and defined pursuant to N.C.G.S. §§ 113A-1 to -13 and all other appropriate environmental laws and regulations. If required, the Department shall design an erosion control plan for the Project.

6. RIGHT-OF-WAY (ROW)

The Department shall be responsible for acquiring the ROW/property required for the construction of the Project, excluding ROW/property required for the Betterments work.

(a) BETTERMENTS

It is understood by all Parties that all Betterments work shall be performed within the existing ROW. However, should it become necessary, the Municipality, at no expense or liability whatsoever to the Department, shall provide any needed ROW and/or construction easements for the construction of the Betterments, and remove from said ROWs all obstructions and encroachments of any kind or character. Acquisition of any needed ROW shall be performed in accordance with the following State and federal policies and procedures, "Right of Way Acquisition Policy and Land Acquisition Policy, contained in

the Federal-Aid Policy Guide, Part 712, Subpart B”, N.C.G.S. §§ 133-5 to -18, Relocation Assistance, and the North Carolina Department of Transportation Right of Way Manual.

The Department shall be indemnified and held harmless from any and all damages and claims for damages associated with the acquisition of any construction easements and/or ROW required for the Betterments.

(b) RIGHT OF ENTRY FROM THE MUNICIPALITY TO THE DEPARTMENT

The Municipality hereby grants the Department a Right of Entry for access to any necessary municipally owned street or property in order to perform the Project and Betterments work and any additional improvements as defined by the Project plans.

7. UTILITIES

In the event utility conflicts are discovered within the Project area, the owners of the conflicting utilities shall be responsible, at their sole expense, for the relocation and adjustment of their utilities. All utility work shall be covered under a separate Utility Agreement.

8. CONSTRUCTION

The Department, and or its agent, shall construct the Project and Betterments in accordance with the Department’s standards and specification, State policies and procedures, and the approved project plans. The Department shall administer the construction contract for said Project.

9. PROJECT BETTERMENTS COST REIMBURSEMENT BY THE MUNICIPALITY

The Municipality shall reimburse the Department the actual cost, including administrative costs, of all work performed by the Department and associated with any Betterments work. Applicable reimbursement to the Department is set out below:

Sidewalk and Multi-Use Path

Based on the Department’s Complete Streets Implementation Guide, Section 7, the Municipality shall reimburse the Department twenty percent (20%) of the actual cost of the construction of sidewalk and Multi-Use path, excluding the replacement of existing sidewalk on the East side of Miami Blvd.

Vinyl Coated Chain Link Fence

The Municipality shall reimburse the Department One Hundred percent (100%) of the cost difference of the vinyl coated chain link fence proposed by the Municipality.

The current estimated Project cost amount the Municipality will reimburse to the Department is Fifty-Six Thousand Four Hundred Seventy-Three and 03/100 Dollars (\$56,473.03), as shown on EXHIBIT A.

(a) SUBMITTAL OF INVOICE

Upon completion and acceptance of the Project by the Department, the Department shall submit an invoice to the Municipality for the actual cost of all work performed by the Department and associated with the Betterments work. Payment to the Department shall be made within sixty (60) days of receipt of an invoice from the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with N.C.G.S. § 147-86.23.

(b) FAILURE TO SUBMIT PAYMENT BY MUNICIPALITY

In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, N.C.G.S. § 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the N.C.G.S. § 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with N.C.G.S. § 147-86.23.

(c) ACH PAYMENTS

It is the Department's policy to pay invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices via ACH, if applicable, the party(ies) shall execute the Department's standard State of North Carolina Department of Transportation ACH – EFT Authorization Form (hereinafter "ACH Authorization Form").

10. MAINTENANCE

The Municipality, at no expense or liability whatsoever to the Department, shall assume all maintenance responsibilities for all improvements made to municipal streets and/or properties owned by the Municipality, including all Betterments covered by this Agreement.

11. OTHER PROVISIONS

(a) PERMANENT CLOSURE

The Department and Municipality fully recognize that the crossing closure covered under this Agreement is intended to be perpetual, and that one Party shall not petition any other Party or entity to reopen the subject at-grade crossing. It is also agreed by the Department and Municipality that no new at-grade public or private crossing will be opened in the vicinity of the closed crossing.

(b) E-VERIFY COMPLIANCE

E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. The Parties warrant that they and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach

of this warranty by any Party will be considered a breach of this Agreement, which entitles the other Parties to terminate this Agreement, without penalty, upon notice to the breaching Party.

(c) INDEMNIFICATION OF DEPARTMENT

To the extent authorized by law, each Party shall be responsible for its respective actions under the terms of this Agreement and indemnify and save harmless the other Party(ies) for any claims for payment, damages, and/or liabilities arising as a result of such action. Except that indemnification given by the Department shall be only in the manner and to the extent allowed by North Carolina law, including the Tort Claims Act, N.C.G.S. §§ 143-291 *et seq.*, and without waiver of its sovereign immunity.

(d) AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in this Agreement, and this Agreement shall automatically terminate if funds cease to be available.

(e) TERMINATION OF PROJECT

(i) The Department shall have the right to abandon the Project at any time it sees fit prior to the time the Municipality has been called upon to perform any part of this Agreement.

(ii) If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

(f) FAILURE TO COMPLY

Failure on the part of the Municipality to comply with any of the provisions of this Municipal Agreement will be grounds for the Department to terminate participation in the cost of the Project and, if applicable, seek repayment of any funds expended by the Department.

(g) TRANSFER OF RESPONSIBILITIES

The Department must approve any assignment or transfer of responsibilities of the Municipality set forth in this Municipal Agreement to other entities.

(h) DEBARMENT

It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency, federal or State. The Municipality certifies, by signature of this Agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or State department or agency.

(i) CONFLICT OF INTEREST

No member, officer, or employee of the Department or the Municipality shall have any interest, direct or indirect, in this Agreement or the proceeds there from.

(j) AGREEMENT MODIFICATIONS

Any modification to this Agreement will be agreed upon in writing by all Parties prior to being implemented.

(k) COMPLIANCE

The Municipality, and/or their agents, shall comply with the following Federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and (c) Title VI – Civil Rights Act of 1964, as amended.

(l) TRAFFIC CONTROL

It is further agreed that upon completion of the Project, the Department shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the “Policy on Street and Driveway Access to North Carolina Highways”, and departmental criteria.

12. ETHICS PROVISION

By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this MUNICIPAL CONSTRUCTION AGREEMENT has been executed the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

CITY OF DURHAM

BY: _____

BY: _____

NAME: _____

NAME: Wanda Page

TITLE: _____

TITLE: City Manager

DATE: _____

DATE: _____

MUNICIPAL SEAL

Approved by the City of Durham governing board as attested to by the signature of

Clerk of the City Council, _____
(Date)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Municipal Finance Director

FEDERAL IDENTIFICATION NUMBER

City of Durham

MAILING ADDRESS

City of Durham
101 City Hall Plaza
Durham, NC 27701
ATTN: Eric Vitale
Transportation Planner
Eric.vitale@durhamnc.gov

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NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: _____

NAME: Julie White

TITLE: Deputy Secretary of Multi-Modal
Transportation

DATE: _____

SEAL

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Engineering Coordination and
Safety Branch

1556 Mail Service Center

Raleigh, North Carolina 27699-1556

ATTN: Kumar Trivedi

Engineering Coordination Manager

katrivedi@ncdot.gov

APPROVED BY BOARD OF TRANSPORTATION ITEM O: April 6, 2023
(Date)

EXHIBIT A
Estimate Cost Share and Betterment

Miami Blvd (West Side) New Sidewalk (20% Cost Share)

Sidewalk	Approx. Length	Area (SF)	Cost
16+50 - 26+09	956	4836.74	\$25,795.95
26+56 - 30+65	409	2074.11	\$11,061.94
31+47 - 33+89	242	1214.77	\$6,478.78
34+33 - 35+10	77	387.60	\$2,067.20
Total			+\$45,403.86

Miami Blvd (East Side) Multi-Use Path (20% Cost Share)

Multiuse Path	Approx. Length	Area	Tons (\$9.5B)	Tons (\$25.0C)	Asphalt Binder	Cost
16+50 - 30+74	1424	15355.98	143.32	389.02	25.72	\$45,306.29
31+80 - 37+56	576	5983.76	55.85	151.59	10.02	\$17,654.49
38+50 - 51+78	1328	13504.69	126.04	342.12	22.62	\$39,844.23
Total						+\$102,805.00

Miami Blvd (East Side) Existing sidewalk to be replaced with Multi-Use Path (no charge to the city.)

Existing Sidewalk	Approx. Length	Area	Cost
38+50 - 51+78	1328	6693.16	-\$35,696.84

Additional ROW and/or Easement needed to construct Multi-Use Path (20% Cost Share)

Parcel	Easement (SF)	Appraised Value	Right of Way (SF)	Appraised Value	Actual Cost
6 (Sta 19+00)	3716	\$8.00 (\$PSF) x 3716 x 95% = +\$28,241.60	0	0	TBD-condemnation settlement pending. Improvement value not included

6 (Sta 35+00)	3895	\$8.00 (\$PSF) x 3895 x 95% = +\$29,602	3682	\$8.00 (\$PSF) x 3682 = +\$29,456	TBD-condemnation settlement pending. Improvement value not included
12	2173.41	\$12.3557947 (\$PSF) x 2173.41 sf x 95% = +\$25,511.50	2127.91	\$12.3557947 (\$PSF) x 2127.91 = +\$26,292.02	TBD-condemnation settlement pending. Improvement value not included

Vinyl Coated Chain Link Fence (100% Cost Share) = 615 LF X \$10 additional betterment cost = +\$ 6150.00

Total City of Durham Cost Share = (\$45,403.86 + \$102,805.00 - \$35,696.84 + \$28,241.60 + \$29,602.00 + \$29,456.00 + \$25,511.50 + \$26,292.02) X 0.20 + \$6150.00 = \$56, 473.03